

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 885 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

HARISH S SHRIVASTAV

Versus

UNION OF INDIA

Appearance:

MR MS TRIVEDI for Petitioner

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 12/02/98

ORAL JUDGEMENT (Per K.G.Balakrishnan,J.)

In this petition, the petitioner has challenged the order passed by the Central Administrative Tribunal Ahmedabad in O.A.No. 278/97. The petitioner is working with the Railway as ESM Grade-I. There was a limited departmental competitive examination for selection to the post of S.I. in Signals and Telecommunication

Department. The petitioner along with 64 other employees had participated in the written examination and out of them 3 candidates which included the petitioner and respondent no.4, were called for viva-voce. The petitioner contended that he had secured more marks both in the written test as well as in viva-voce, but the petitioner was not selected and respondent no.4, who had secured less mark in the written test and viva-voce test was selected. The petitioner contended that the selection of respondent no.4 was illegal and requires to be quashed. The respondent-Railway contended that the selection was done in accordance with the departmental instructions and guidelines. The Tribunal held that the selection was done in accordance with the Rules. It was held by the Tribunal that, according to the instructions, it was only a limited competitive examination and once a senior person qualifies in that examination by securing 60% in the written test and the aggregate, he is to be placed at the top of the panel list irrespective of the fact that he might have secured lesser marks than other candidates and the selection was accordingly done. The Tribunal dismissed the O.A. Application and hence this Special Civil Application.

2. We heard the learned Counsel appearing for the petitioner. According to him, the selection was a limited departmental selection to the 20% quota earmarked and therefore, the normal Rules and Instructions given in Annexure D, cannot be applied. We cannot accept this contention advanced by the petitioner's Counsel. The petitioner, who is a departmental candidate, sought selection to the higher post and his selection to the higher post was based on the departmental examination and viva-voce. The minimum mark required for calling for viva-voce test is 60 and those who secure 60% marks and above in aggregate would qualify to be empanelled and such panel shall be drawn on the basis of the seniority. The instructions further say that all the candidates who secured 80% marks and above should be treated as outstanding and placed on the top of the panel without any restriction as to their number but maintaining the inter-se seniority among themselves. Thus, it is clear that the selection is made on the basis of seniority-cum-merit. Those who secure 80% and above are treated as outstandingly meritorious and they are given promotion superseding seniors who have secured lesser marks. Thus, the Rules are reasonable in the matter of selection to the higher posts. Admittedly, the petitioner has not secured 80% marks or above and he is junior to respondent no.4 in the feeder category. Eventhough, the petitioner was able to secure more marks

than his senior respondent no.4 it cannot be said that he was demonstrably superior to respondent no.4 so as to steal a march over the 4th respondent.

3. The selection has been made perfectly in accordance with the Rules and the guidelines issued by the Railway. The petitioner has not challenged the guidelines to contend that these guidelines are illegal and it cannot be applied for present selection. It was contended that the competitive exam was held exclusively for the 20% quota post and therefore, these guidelines are not applicable.. We cannot accept this contention. The guide lines have been rightly applied as it was the case of an inservice promotion based on competitive examination and viva-voce.

4. The Tribunal has rightly rejected the Original Applicaiton and the review application filed by the petitioner before it. The Special Civil Application is dismissed.
